IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4898 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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KESHARSNH RATANSINH JADEJA (DELETED) & 4 - Appellant(s)
Versus
ANALBHAI VIRABHAI RATHOD DRIVER OF S.T. BUS & 2 - Defendant(s)

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Appearance :
MR CHETAN P PANDYA for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 MR PRANAV M RAVAL for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
RULE UNSERVED for Defendant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 2 - 3.
MR HS MUNSHAW for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 14/03/2007

ORAL JUDGMENT

1. Admit. Mr.H.S.Munshaw, learned advocate for the respondent no.2 waives notice of admission.

2. The appellants have challenged in this appeal which is filed under Section 173 of the Motor Vehicles Act, 1988 (herein-after referred to as 'Act') the judgment and award of the Motor Accident Claim Tribunal (Auxiliary), Fast Track Court No.4 at Morvi passed in Motor Accident Claim Petition No.165 of 1992 dated 3/8/2006. By the said award, the Tribunal has granted compensation of Rs.32,000/- together with interest at the rate of 7.5 percent per annum from the date of application till realization and proportionate cost. According to the appellants, the quantum of compensation is inadequate and it is required to be enhanced.

3. The deceased Pratapsinh Kesharsinh Jadeja was checking the bus belonging to respondent nos.2 and 3 i.e. Gujarat State Road Transport Corporation on 1/5/1992 at the new S.T. Bus Stand of Morvi. At that time, driver of bus bearing registration no.GJ-1Z-1377 drove his vehicle rashly, negligently and knocked down the deceased. He sustained serious injuries and ultimately expired. His parents namely Kesharsinh Ratansinh

Jadeja and Sajanba Kesharsinh Jadeja filed aforesaid petition for obtaining compensation of Rs.3,00,000/-. During the pendency of the proceedings, they expired. Hence present appellants who are the heirs and legal representatives of the deceased-claimants have been brought on record. They prosecuted the petition before the Tribunal and now they are prosecuting the present appeal before this Court.

4. Mr.Pranav M. Raval, learned advocate appearing for the appellants has submitted that the assessment of the compensation made by the Tribunal is unjust and improper. According to him, the Tribunal has not properly appreciated the relevant aspects for determining the loss of income, actual as well as future. He has also submitted that the rate of interest awarded by the Tribunal is very less. As against that Mr.H.S.Munshaw, learned advocate for the respondents has submitted that the appeal at the instance of the appellants is not maintainable. He has further submitted that the compensation determined by the Tribunal is just and proper and no interference is required.

5. I have perused and considered the submissions made by

both the advocates. I have also perused the record and proceedings of the case very closely. The deceased was aged about 32 years at the relevant time. He was being employed as driver on daily wage basis. The daily wage at the relevant time was Rs.49.23/-. His salary slip is on record. It shows that on 7/5/1992, he received Rs.500/15 paisa by way of his wages. The Tribunal has placed reliance solely on this document to determine his income. This document clearly shows that the amount mentioned in it reflects the wages of 10 days only and the Tribunal was not right in taking his income at Rs.500/- per month. The deceased was aged about 32 years and it can well be presumed that unless he was efficient in driving, he would not have been employed as a daily wager in the respondent corporation. Assuming the Tribunal was right, it is also not believable that his income would have remained static at Rs.500/- per month. The Tribunal therefore seems to have committed error in calculating his income on the basis of 10 days wages alone. As a driver, he would have earned at-least Rs.1,000/- per month in those days. It may also be kept in view that he was aged about 32 years and he had a long way to go in life. Therefore his income would have not remained the same. With the passage of time, it would have

increased. The prospective income therefore can be calculated at Rs.1,500/- per month. Since he was a bachelor, 2/3rd of the amount he would have spent on his own family after marriage. Hence, same would be required to be deducted and only 1/3rd would be available to the appellants. The monthly loss would be Rs.500/- and annual loss would be Rs.6,000/-. The Tribunal seems to have applied the multiplier on higher side. It ought to have been of 11 years. Therefore, lose of prospective income would come to Rs.66,000/-. The appellants have been awarded 28,000/-. They will be therefore, entitled to receive additional compensation of Rs.38,000/- under the head of loss of prospective income.

6. So far as the rate of interest is concerned, it is obviously less and it is required to be enhanced to 10 (ten) per cent since around the time of accident, the said rate of interest was prevalent.

7. So far as submission of Mr.H.S.Munshaw, learned advocate with regard to maintainability of the appeal is concerned, it cannot be accepted in view of the decision rendered by the Division Bench of this Court in the case of New India Assurance Co. Ltd. v. Ashwin

Vrajlal Rajgor, reported in 2005 (2) GLH 85. In the said decision, it has been held as under:

> "Question with regard to claimants being legal heirs/legal representatives of the deceased should not detain us for long keeping in view the broad and liberal nature of the legislation and the decision of this Court in Megjibhai Khimji Vira and another v. Chaturbhai Taljabhai and others (AIR 1977 Gujarat 195) wherein the Division Bench speaking through Ahmadi J. (as His Lordship then was) held that claims for compensation arising out of the use of a motor vehicle can be maintained by the brothers and nephews of the deceased who are legal representatives. This decision is approved by the Apex Court in Gujarat Stat Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another (AIR 1987 SC 1690)."

8. In view of the aforesaid decision, the respondents are directed to deposit the additional amount of Rs.38,000/- together with the interest at the rate of 10 (ten) per cent p.a. from the date of application till realization and proportionate costs. It is stated by Mr.H.S.Munshaw that the entire award amount has already been deposited.

However, considering the fact that the rate of interest is less, the respondents are now required to pay interest at the rate of 10 (ten) per cent p.a. on the award amount. They have deposited the interest calculating at the rate of 7.5 per cent p.a. Therefore, the Insurance Company will deposit the additional amount of interest at the rate of 2.5 per cent p.a. on the original award amount from the date of application till deposit in the Tribunal. This appeal is therefore, partly allowed. Record and proceedings to be transmitted to the concerned Tribunal forthwith.

(Akshay H. Mehta, J.)

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